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IN THE

Supreme Court of the United States

October Term, 1966

No. 847

WILLIAM RAY CORBEAN (a minor, By WILLIAM CHARLES CORBEAN, His Father and Next Friend,
Petitioner,

vs.

XENIA CITY BOARD OF EDUCATION,
Respondent.

SUPPLEMENT TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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MOTION

Comes now the petitioner herein and asks leave to docket and file his Supplement to Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit. All opposing counsel of record have been served with typewritten copy of said supplement in ample time to respond to the contents of the within supplement in their Brief. The contents of said Supplement are material and vital to the issues involved in this action before the Honorable Court.

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Attorney for Petitioner.

SUPPLEMENTARY MATTER FOR WRIT OF CERTIORARI

Since there are additional matters to be brought to the attorneys representing the respondent, and there may not be sufficient time to run this off on the press, the following is initially hastened and brought to the attention of those preparing the opposing brief. Opposing counsel may wish to comment upon these additional matters in their forthcoming brief.

You will note on page 6 of the Petition that there are four major cases coming from the Third and Ninth Circuit Court of Appeals which the writer holds are in conflict with the opinion of the Sixth Circuit in the instant case. In all of these cases there is a strong current relied upon by the successful parties in these cases from the Third and Ninth Circuits which emphasizes the "right of privacy". This right of privacy is additionally relied upon by the petitioner herein to all of the other rights, privileges or immunities embraced in both protective branches of the Fourteenth Amendment to the Constitution of the United States.

It will be noted in the case of *Basista v. Weir*, 340 F. 2d 74 that the police officer invaded the home of the complainant and was struck in the back of the head without provocation. This undoubtedly is an invasion of the right of privacy, and the "right to be undisturbed" as emphasized in the *Basista* opinion.

On page 81 of the *Basista* opinion Judge Biggs asserts the following:

> "The Civil Rights Act is not to be interpreted narrowly. *Valle v. Stengel*, 176 F. 2d 697, 702 (3rd Cir. 1949). In *Hague v. C.I.O.*, 101 F. 2d 774, 789 (3rd Cir.),

> modified, 307 U. S. 496, 59 S. Ct. 954, 83 L. Ed. 1423 (1939), we said 'such an action sounds in tort.' In *Picking v. Pennsylvania R. Co., supra,* 151 F. 2d at 249 we stated, 'We are compelled to the conclusion that Congress gave a right of action sounding in tort to every individual whose federal rights were trespassed upon by any officer acting under pretense of state law.' In *Monroe v. Pape, supra,* 375 U. S. at 187, 81 S. Ct. at 484, it was said that 'Section 1979 (42 U.S.C.A., Sect. 1983) should be read against the background of tort liability that makes a man responsible for the natural consequences of his actions.' "

In the Corbean Case, at hand, it is no answer to say that the injury was caused by and precipitated by the altercation of two colored boys in the school room. The answer to this is that the respondent had the obligation to keep order in the school room, and this the respondent neglected to do. In the recent opinion of *Commercial Union Ins. Co. v. Gonzales Rivera,* 358 F. 2d 480 (1st Cir., 1966) it was held that,

> "A person who by an act or omission causes damage to another through fault or negligence shall be obliged to repair the damage so done."

In the case of *York v. Story,* 324 F. 2d 450 (9th Cir. Calif.) mentioned at the bottom of page 6 of the Petition, certainly there was an invasion of the right of privacy when the police officer tortiously compelled the complainant to undress and took photographs of the injured party in the nude.

Furthermore, in the case of *Lucero v. Donovan,* 354 F. 2d 16 (1963, 9th Cir.) there was an invasion of the right of privacy when the police officers entered the bathroom of Irene Lucero's home where she was tending her children,

without warrant, and when she vehemently protested, she was handcuffed and taken to jail. The reviewing court said,

> "If the search and seizure at her apartment were unlawful, liability could follow, as against Conrad, for the entire chain of events, which, in continuous and unbroken sequence, followed his unlawful act." p. 20.

Certainly, in this expanding and intensified age of population congestion wherein the right of privacy is paramount to the students in our schools and the workers under governmental supervision, all such need the protection and application of the Civil Rights Act.

Two copies of this Supplement are being sent to both attorneys of record and to the Office of the Attorney General of the State of Ohio.

CONCLUSION

WHEREFORE, for the reasons stated in the Petition for Writ of Certiorari and this Supplement, the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

VICTOR F. SCHMIDT,
Counsel for Petitioner.

January, 1967.